

In the Matter of Merchant Mariner's Document No. Z-759500 and all  
other Seaman Documents  
Issued to: Benito F. Hernandez

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1335

Benito F. Hernandez

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 14 December 1961, an Examiner of the United States Coast Guard at Port Arthur, Texas revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an ordinary seaman on board the United States SS GULFCREST under authority of the document above described, on 9 November 1961, Appellant assaulted and battered a member of the crew, oiler Glenn Miller, with an object while the ship was at Guayanilla, Puerto Rico.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of oiler Miller, an entry in the ship's Official Logbook with attached statements by three crew members who witnessed part of the incident, and the Report of Personal Injury made by the Master on a Coast Guard form.

Appellant and two character witnesses testified in defense. Appellant admitted that he struck Miller four of five blows with a piece of pipe wrapped in a towel while Miller was asleep in order to "get even" for a completely unprovoked attack ashore about seven hours earlier when Miller knocked Appellant down and then kicked him.

FINDINGS OF FACT

On 8 and 9 November 1961, Appellant was serving as an ordinary seaman on board the United States SS GULFCREST and acting under authority of his document while the ship was at Guayanilla, Puerto Rico.

About 2000 on 8 November, Appellant was beaten by oiler Miller after an argument between the two seamen while they were ashore.

Miller returned on board about midnight. At approximately 0330 on 9 November, he was awakened by blows to his body delivered by Appellant using a piece of 3/4-inch pipe about fifteen inches long which was wrapped in a towel. Miller's roommate was awakened and turned on the light. Other crew members were attracted by the noise. Miller's roommate or another member of the crew stopped Appellant from beating Miller with the pipe.

Miller suffered two scalp lacerations more than an inch long which required stitches as well as bruises and swelling on various parts of his body. He was hospitalized for a week and was still unfit for sea duty when he testified at the hearing twenty days after the incident.

Appellant has no prior record.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that there is not substantial evidence to prove the alleged offense. There is confusion in the statements of the three crew members which are attached to the logbook entry and these statements contradict Miller's testimony as to what occurred.

Matters which should be considered in mitigation are: there was extreme provocation; Appellant honestly believed he was continuing the fight started ashore; Appellant's unblemished record for 16 years at sea indicates that this was an isolated incident; Two witnesses testified as to Appellant's good character; Appellant has no other livelihood to support his family; other Commandant's decisions resulted in less than revocation for similar offenses of assault and battery.

APPEARANCE: John H. Land, Esquire, of Beaumont, Texas, of Counsel.

#### OPINION

Despite some understandable confusion, as to the details, due to the excitement and Miller's dazed condition when he awakened, it is perfectly clear that Appellant committed this offense more than seven hours after he was beaten by Miller while ashore. Appellant admits this attack and there is no other explanation for the injuries suffered by Miller, particularly the two scalp lacerations.

Considering Appellant's prior clear record and the fact the

Examiner improperly allowed the specification to be amended by substituting the words "an object" for "a deadly weapon, to wit: a piece of pipe," the order will be modified.

ORDER

The order of the Examiner dated at Port Arthur, Texas, on 14 December 1961, is modified to provide for a suspension of twelve (12) months.

As so MODIFIED, the order is AFFIRMED.

D. McG. MORRISON  
Vice Admiral, United States Coast Guard  
Acting Commandant

Signed at Washington, D. C., this 20th day of August 1962.